

RECEIVED

JAN 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of :
:
Implementation of Section 8 of the Cable : MM Docket 92-263
Television Consumer Protection and :
Competition Act of 1992 :
:
Consumer Protection and Customer Service :
:

To: The Commission

COMMENTS OF THE CITY OF BAYONNE, NEW JERSEY

The City of Bayonne, New Jersey hereby submits these reply comments in the above-captioned proceeding.

I. INTRODUCTION

The Federal Communications Commission ("FCC" or "Commission"), by Notice of Proposed Rulemaking adopted December 10, 1992, seeks comment on implementation of the consumer protection and customer service provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"). Section 8 of the 1992 Act requires the Commission to establish Federal customer service standards within 180 days after enactment.

The City of Bayonne (the "City") is located in Hudson County, New Jersey, and occupies a three-mile long peninsula dividing the waters of the New York and Newark Bays. Bayonne has a population of over 61,400 and has approximately 24,000 households.

Bayonne was one of the first cities in New Jersey to become involved in adjudicative proceedings concerning renewal of a cable television franchise. In June of 1989, based

No. of Copies rec'd
List A B C D E

244

upon the City's review of its cable operator's past performance and its assessment of the community's future cable-related needs, the City Council voted unanimously to deny the operator renewal of municipal consent to operate a cable system in Bayonne. The operator appealed to the New Jersey Board of Public Utilities, thereby commencing a protracted administrative process, which resulted in a negotiated settlement. The settlement entered into by the City and cable operator provided for renewal of the franchise on terms substantially more favorable to the City than those of the initial franchise. Many of the agreed-upon improvements dealt with consumer protection and customer service issues.

The City of Bayonne has had an opportunity to review the comments filed in this proceeding by the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, "Local Governments"). The City is in substantial agreement with the position taken by the Local Governments, and is filing these reply comments to address some of the matters covered in the Local Governments' comments that are of particular interest to the City.

II. DISCUSSION

A. The Commission Should Adopt More than "Minimum" Customer Service Standards.

The City is aware that customer service has been a persistent problem for cable subscribers throughout the country. Indeed, Bayonne residents' dissatisfaction with the system operator's record of customer service was a substantial contributing factor to the

City's initial decision in 1989 to deny franchise renewal.

The legislative history of the 1992 Act is filled with testimony from cable subscribers and franchising authorities documenting customer service problems. Because of the existence of only minimal competition in the video services marketplace, cable operators have had little or no incentive to offer consistently high quality customer service. See H.R. Rep. No. 628, 102d Cong., 2d Sess. 36 (1992)

In drafting the 1992 Act, Congress intended that cable subscribers receive service superior to that currently available from many cable operators. For this reason, the 1992 Act expressly requires the Commission to promulgate national standards for customer service. It has been suggested by the Commission that it adopt only "minimum" customer service standards, and leave state and local governments the opportunity to exceed those standards if necessary.

The City of Bayonne agrees with the Local Governments that such an approach misinterprets the 1992 Act. Section 8 of that Act provides that the Commission's standards "shall include, *at a minimum*, requirements governing (1) cable system office hours and telephone availability; (2) installations, outages, and service calls; and (3) communications between the cable operator and the subscriber (including standards governing bills and refunds)" (emphasis added). The reference to "at a minimum" means that the FCC standards must at least address the issues enumerated in the statute, but may address additional customer service issues that the FCC deems necessary or appropriate. Section 8 does not require that the Commission take a "minimalist" approach and adopt minimum standards. Such an approach would defeat Congressional intent to protect consumers from

monopolistic practices. Although some franchise authorities have been able to enact or negotiate adequate customer service standards, this has not been the case in many locales, particularly in small towns and suburbs. Residents of these areas are entitled to receive service of as high a quality as residents in large cities. It was clearly not the intent of Congress that the Commission adopt a low baseline set of standards perpetuating the regulatory framework that existed under the 1984 Cable Act.

B. The Commission's Standards Should
 Be Self-Executing.

It is the City of Bayonne's position that local governments should not be required to take affirmative action to adopt the Commission-established standards. The Commission's customer service standards should apply automatically and uniformly to all cable systems, upon the effective date of the rules, on a standard-by-standard basis. The exception to such standards being self-executing would be (1) if more stringent standards are already in place, whether such standards were negotiated by the cable operator and local franchising authority, or whether such standards are applicable pursuant to state or local law; or (2) Commission standards would apply until a franchising authority promulgates more stringent or different standards.

If franchising authorities were required to take affirmative action to adopt FCC-established standards, they would very likely be inundated by piecemeal cable industry challenges on a jurisdiction-by-jurisdiction basis. These challenges would serve only to delay the protection that Congress intended to provide cable consumers and undermine Congress' goal of requiring national customer service standards.

C. The Commission Should Not Provide An
Exemption From Its Standards for Smaller
Cable Systems.

The Commission's Notice of Proposed Rulemaking seeks comment on whether the FCC's standards should include an exemption for measurement of compliance by small cable systems. The 1992 Act neither requires nor provides for an exemption for smaller systems from the Commission-established standards. The City believes that if Congress had intended an exemption for smaller systems, it could have provided one in the statute. Residents of smaller communities are entitled to the same quality of service as residents of larger communities. Congress' concern that the absence of competition provides cable operators with little incentive to offer high quality customer service applies to cable systems of all sizes.

Moreover, cable systems with relatively small numbers of subscribers do not necessarily have an inability to comply with the FCC standards. A cable system, such as the one in Bayonne, may be operated by a large multiple system operator ("MSO"), and provide service to tens of thousands of subscribers in nearby communities. Although each so-called "small system" may service a relatively small number of subscribers, collectively the operator serves a large number of subscribers. Such operators should not be automatically exempt from the Commission's standards. Instead, the Commission should consider adopting a waiver procedure whereby a cable operator may seek relief from a particular FCC standard if the particular standard proves to be too onerous or otherwise not in the public interest in a specific community. Should the Commission nevertheless

decide to provide an exemption for smaller systems, its rule should draw a careful distinction between wholly-owned stand alone systems and all other systems.

D. The NCTA Standards Are Not Appropriate for
Adoption By the Commission.

The City of Bayonne urges the Commission not to adopt the Recommended Industry Standards adopted by the National Cable Television Association ("NCTA"). The NCTA standards are neither stringent nor sufficiently specific. In order for the Commission's standards to have any meaning and enforceability, they must be more quantitative.

The Local Governments attached to their comments a chart comparing the NCTA standards to consumer protection standards being applied to cable systems of different sizes in various jurisdictions. The City finds many of these examples would serve as better models for the Commission's standards than the NCTA standards.

1. Customer Service Hours

In the NCTA standards, the term "normal business hours" is used to describe the period during which company representatives are to be available to respond to customer telephone inquiries. In a service industry such as cable television, normal business hours should not be the same as general office hours. With respect to the former term, the hours should be stated with specificity (e.g., between the hours of 7:00 a.m. and 8:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on weekends).

2. Telephone Service Time

The NCTA standards recommend that the time to answer a telephone call not exceed 30 seconds. The City recommends that the Commission establish a standard requiring that calls be answered within four (4) rings, and that customers be placed on hold for no more than 30 seconds. The Commission should also require that callers receive a busy signal no more than three percent (3%) of the time.

3. Walk-in Office Hours

The NCTA standards suggest that service centers be open Monday through Friday during "normal business hours". The City finds this to be inadequate. The Commission's standard should state the specific hours that the centers must be open, and those hours should be no less than eleven (11) hours per week day, and at least five (5) hours on the weekend.

4. Service Call Scheduling

The NCTA standards provide only that the operator must notify the customer if the service call is to be made in the morning, afternoon, or evening. This standard is deficient in that it does not require the cable operator to give the consumer a choice. The Commission should adopt a standard that permits the customer to schedule an appointment either at a specific time or within a four-hour block. The company should also be prohibited from cancelling any appointment less than 24 hours before the appointment time. Additionally, if the company misses a service appointment, the subscriber should be entitled to credit for one month's service.

5. Service of Outages

The NCTA standards state that the cable operator will respond to service interruptions promptly, and in no event later than 24 hours. The City of Bayonne recommends that the Commission-established standard require that system outages be responded to within two (2) hours, and that repairs must be made 24 hours a day. Additionally, the standard should require that outages be corrected within 12 hours after the company first becomes aware of the outage. Furthermore, the operators should be required to give 24 hour credit for every outage lasting more than four hours in any 24 hour period or calendar day.

6. Voluntary Disconnection

The Commission's standards should make clear that a customer may request disconnection at any time, and that no fee may be charged for disconnection or downgrades at any time. The NCTA standards fail to address this point.

7. Billing


The City of Bayonne urges the Commission to adopt customer service requirements to ensure that subscribers have complete and accurate information. Local governments should be authorized to review the operator's bills to ensure that the information provided to subscribers is not misleading. The Commission should adopt standards requiring cable operators to itemize each service and equipment provided to the subscriber. Cable operators should also be prohibited from mischaracterizing the franchise fees payable to the franchising authority on a subscriber's bill. Many operators characterize the franchise fee as a tax levied on the subscriber's service by the franchising authority, instead of as a

percentage of the operator's gross revenue received from operation of the system. This practice is misleading and should be forbidden.

III. CONCLUSION

The City of Bayonne believes that the recommendations made herein will result in higher quality service to cable consumers, without unduly burdening cable operators.

Respectfully submitted,

By: 

Gary D. Michaels
KRIVIT & KRIVIT, P.C.
50 E Street, S.E.
Washington, DC 20003
(202) 544-1112

Counsel for the City of
Bayonne, New Jersey

Dated: January 25, 1993